IN THE

Supreme Court of the United States

October Term 1942

No.....

MARTIN BROTHERS BOX COMPANY,
Petitioner and Respondent Below

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent and Petitioner Below

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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SUBJECT INDEX

Page

Petition for Writ of Certiorari..... 1

I. Summary Statement of the Matter Involved.... 1

II. The Basis for the Jurisdiction of This Court to Review the Decree in Question..... 4

III. Questions Presented 4

IV. Reasons Relied on for the Allowance of the Writ 5

Brief in Support of Petition for Writ of Certiorari.... 7

I. Opinions Below 7

II. Jurisdiction 7

III. Statement of the Case..... 8

IV. Specifications of Error..... 13

V. Argument. 14

(Point 1). The finding of the Board that petitioner has interfered with the rights of self-organization of its employees in violation of Section 8(1) of the Act is not supported by substantial evidence 14

(Point 2). The finding of the Board that petitioner, in terminating the employment of its employees, McDaniel and Huff, discriminated against said employees in violation of Section 8(3) of the Act is not supported by substantial evidence 18

A. Alvin McDaniel 20

B. Charles Clifford Huff..... 22

C. The discharge of the employees McDaniel and Huff did not discourage membership in the Union..... 23

(Point 3). The finding of the Board that petitioner has failed to bargain collectively with its employees within the meaning of Section 8(5) of the Act is not supported by substantial evidence 24

Conclusion. 30

TABLE OF CASES CITED

Page

American Smelting & Refining Company vs. National Labor Relations Board, 126 Fed. (2d) 680..... 19

Consolidated Edison Company vs. National Labor Relations Board, 305 U. S. 197.....4, 8, 15, 19, 26

H. J. Heinz Company vs. National Labor Relations Board, 311 U. S. 514.....4, 8, 14, 26

National Labor Relations Board vs. Air Associates, Inc., 121 Fed. (2d) 586.....4, 5, 8, 19, 23, 24, 31

National Labor Relations Board vs. Ford Motor Co., 114 Fed. (2d) 905.....14, 26

National Labor Relations Board vs. Jones & Laughlin Steel Corporation, 301 U. S. 1.....4, 8, 14, 18, 25

National Labor Relations Board vs. Link-Belt Company, 311 U. S. 584.....4, 8, 14

National Labor Relations Board vs. P. Lorillard Company, 117 Fed. (2d) 921.....4, 8, 26

National Labor Relations Board vs. Tex-O-Kan Flour Mill Company, 122 Fed. (2d) 433.....19, 21, 22

National Labor Relations Board vs. Virginia Electric & Power Company, 314 U. S. 469.....4, 8, 14, 16

Southport Petroleum Company, etc., 8 National Labor Relations Board Reports 792..... 21

TABLE OF STATUTES CITED

Judicial Code, Section 240, as last amended by the Act of Congress, approved June 7, 1934, C. 426, 48 Stat. 926 (Title 28, Sec. 347(a) U. S. C. A.).....4, 7

National Labor Relations Act, Section 8, Subdivisions (1), (3), and (5), Section 2, Subdivisions (6) and (7), 49 Stat. 449, 29 U. S. C. Supp. V, Sec. 151 et seq., and Section 10.....2, 4, 14, 18, 24, 25

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED

On September 21, 1940, the Aurora Corrugated Box Workers Union No. 435 (hereinafter called Union) filed its

third amended charge with the National Labor Relations Board (hereinafter called "Board") (Record, p. 47). On September 23, 1940, the Board issued its complaint against Martin Brothers Box Company (hereinafter called "Petitioner"), charging petitioner with unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat., 449, 29 U. S. C. Supp. V, Sec. 151 *et seq.* (hereinafter called "Act") (Record, p. 1 to 5, Board's Exhibit 1-E.). After leave first obtained, petitioner filed its answer, dated October 7, 1940, in which it admitted some of the allegations of the complaint but denied specifically the charges of unfair labor practices (Record, pp. 7 to 10, Boards Exhibit 1-J). Proceedings were then had pursuant to Section 10 of the Act. The Board issued its decision September 5, 1941. The Board's decision contains its findings of fact, conclusions of law, and order (Record, pp. 47 to 81). The Board ordered petitioner to cease and desist from discouraging membership in the Union, from refusing to bargain collectively with the Union, from interfering with, restraining or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act; to reinstate, with back pay, two employees against whom the Board found petitioner had discriminated; upon request to bargain collectively with the Union, and to post appropriate notices of the compliance with said order.

Upon the noncompliance by petitioner with said order of the National Labor Relations Board of September 5, 1941, said National Labor Relations Board on January 21, 1942, filed in the United States Circuit Court of Appeals for the Seventh Circuit its petition, setting forth certain proceedings had before said Board in a proceeding known upon the records of the Board as "In the Matter of Martin

Brothers Box Company and Aurora Corrugated Box Workers Union No. 435, affiliated with the A. F. of L., as No. 1778," setting forth certain findings of fact, conclusions of law, and a certain order made by said Board in said proceedings on September 5, 1941, and praying for an order of said United States Circuit Court of Appeals for the Seventh Circuit, for enforcement of said order. (Record, pp. 561 to 565).

Under date of May 18, 1942, this cause was submitted to said United States Circuit Court of Appeals for the Seventh Circuit upon said enforcement petition filed by the Board, upon the briefs of counsel for the Board and counsel for petitioner, upon the appendices to said briefs, which contained substantially all of the Record herein made before said Board, and upon the oral arguments of counsel for the Board and petitioner.

Under date of June 23, 1942, said United States Circuit Court of Appeals for the Seventh Circuit rendered and filed in this cause its opinion, in substance finding that the Board's enforcement petition should be granted. (Record, pp. 565 to 575).

Under date of July 6, 1942, petitioner filed in said United States Circuit Court of Appeals for the Seventh Circuit its petition for rehearing of this cause (Record, p. 575) which petition for rehearing was denied by said United States Circuit Court of Appeals for the Seventh Circuit under date of July 9, 1942. (Record, p. 575).

On the 14th day of July, 1942, the decree of the court entered pursuant to its opinion of June 23, 1942, was filed herein. (Record, pp. 575 to 577).

II.

THE BASIS FOR THE JURISDICTION OF THIS COURT TO REVIEW THE DECREE IN QUESTION

1. The statutory provision which is believed to sustain the jurisdiction of this Court is Judicial Code, Section 240, as last amended by the Act of Congress approved June 7, 1934, C. 426, 48 Stat. 926. (Title 28, Section 347(a) U. S. C. A.)

2. The cases believed to sustain the jurisdiction of this court are as follows: *National Labor Relations Board vs. Link-Belt Company,* 311 U. S. 584; *National Labor Relations Board vs. Virginia Electric & Power Company,* 314 U. S. 469; *Consolidated Edison Company vs. National Labor Relations Board,* 305 U. S. 197; *National Labor Relations Board vs. Jones & Laughlin Steel Corporation,* 301 U. S. 1; *National Labor Relations Board vs. Air Associates, Inc.,* 121 Fed. (2d) 586; *H. J. Heinz Company vs. National Labor Relations Board,* 311 U. S., 514 and *National Labor Relations Board vs. P. Lorillard Company,* 117 Fed. (2d) 921.

III.

QUESTIONS PRESENTED

The following questions are presented for the consideration of this court:

1. Whether the finding of the Board, affirmed by the United States Circuit Court of Appeals for the Seventh Circuit, that petitioner has interfered with the rights of self-organization of its employees in violation of Section 8(1) of the Act, is supported by substantial evidence.

2. Whether the finding of the Board that petitioner

in terminating the employment of two of its employees, Alvin McDaniel and Charles Clifford Huff, discriminated against said employees in violation of Section 8(3) of the Act, affirmed by the United States Circuit Court of Appeals for the Seventh Circuit, is supported by substantial evidence.

3. Whether the finding of the Board that petitioner has failed and refused to bargain collectively with its employees within the meaning of Section 8(5) of the Act, which finding was affirmed by said United States Circuit Court of Appeals for the Seventh Circuit, is supported by substantial evidence.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The various findings, orders and decrees of the Board, affirmed by the United States Circuit Court of Appeals for the Seventh Circuit, in its decree of July 14, 1942, are not sustained by substantial evidence, involve questions of general importance and do not give proper effect to applicable decisions of this court.

2. The finding and decree of said Board and the said United States Circuit Court of Appeals for the Seventh Circuit, with regard to the discharge by petitioner of its said employees, McDaniel and Huff, are in conflict with the decision of the United States Circuit Court of Appeals for the 2nd Circuit, in the case of *National Labor Relations Board vs. Air Associates, Inc.*, 121 Fed. (2d) 586.

Wherefore, your petitioner prays that a writ of *certiorari* issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this

court a full and complete transcript of the record and of the proceedings of said Circuit Court of Appeals had in the Case No. 7919 on the docket of said court, titled: National Labor Relations Board, Petitioner vs. Martin Brothers Box Company, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment, order and decree rendered herein by said United States Circuit Court of Appeals for the Seventh Circuit be reversed by this court, and for such further relief as to this court may seem proper.

NOLAN BOGGS,
Counsel for Petitioner.

Dated August 13, 1942.